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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. JESUS ALEJANDRO AREVALO, Defendant and Appellant.	H041071 (Santa Clara County Super. Ct. No. C-12-30803)

Defendant Jesus Alejandro Arevalo was accused of sexually abusing his girlfriend's 14-year-old daughter. After a jury trial, defendant was convicted of two counts of forcible sodomy of a minor (Pen. Code, § 286, subd. (c)(2)(C))[1]; one count of forcible oral copulation of a minor (§ 288a, subd. (c)(2)(C)); and one count of forcible sexual penetration of a minor (§ 289, subd. (a)(1)(C)). On appeal, defendant argues: Expert testimony regarding Child Sexual Abuse Accommodation Syndrome (CSAAS) should be inadmissible for all purposes; CALCRIM No. 1193 (regarding CSAAS testimony) improperly instructs jurors that they can consider an expert's testimony about CSAAS when determining a minor's credibility; and a "no visitation" condition from the abstract of judgment must be modified to reflect the trial court's oral pronouncement of judgment. We find no prejudicial error affecting defendant's guilt, but we will modify the no visitation condition and affirm the judgment as modified.

[1] Unspecified statutory references are to the Penal Code.

I. TRIAL COURT PROCEEDINGS

Defendant does not challenge the factual sufficiency of the evidence to support his convictions and his appellate arguments do not require a detailed factual discussion. We therefore briefly summarize the victim's (Doe's) trial testimony about defendant's conduct and the expert's testimony about CSAAS.

A. VICTIM'S TESTIMONY

Defendant lived with his girlfriend and several of her children, including Doe. Defendant had lived in the home since Doe was four years old. Doe testified that defendant was like a stepfather to her.

Doe recounted several abuse incidents that occurred roughly between her 14th birthday in February 2012 and the day before Easter in 2012. She testified that on two occasions, defendant pulled down her pants and underwear and put his penis inside her anus while the two of them were in mother's bedroom at the house. Doe stated that defendant's conduct hurt her and that after the first incident he told her not to tell anyone about what he had done to her. She also testified that on more than one occasion, defendant pulled down her shirt and put his mouth on her breasts while they were in her bedroom. Doe would try to push defendant away but could not because he was bigger than she was. Doe testified that on two occasions, defendant pulled down her pants and underwear and put one or more fingers inside her vagina. On two other occasions, defendant pulled down her pants and underwear and put his mouth on her vagina while they were in mother's bedroom. Doe testified that she did not immediately tell anyone what happened because she was afraid of defendant. She eventually disclosed defendant's conduct to one of her sisters, who contacted the police.

B. CSAAS TESTIMONY

Licensed Clinical Social Worker Miriam Wolf testified as an expert "on the topic of issues relating to children who are victims of sexual abuse." Wolf testified that she had not investigated the facts of defendant's case and that she had never met Doe. Wolf

testified that people often think a child victim of sexual abuse would report the abuse immediately, but victims often delay reporting. Delayed reporting is sometimes due to the perpetrator telling the victim not to tell anyone or telling the victim that no one will believe him or her. Wolf testified that another misconception is that victims are usually abused by strangers, whereas sexual abuse is usually committed by someone the victim knows. When asked about the term "grooming," Wolf explained that an abuser will often engage in seemingly normal adult/child behavior (such as buying the victim gifts or spending special time with the victim) in order to build a relationship that the abuser can then exploit. Wolf testified that there are various strategies that child sexual abuse victims use to cope with abuse and that the ability to cope varies from victim to victim. According to Wolf, victims often delay disclosure of certain aspects of abuse, telling bits and pieces initially and then disclosing additional details over time.

Wolf did not use the term Child Sexual Abuse Accommodation Syndrome during direct examination by the prosecution but acknowledged on cross-examination that her testimony was based on research that followed an article with that title published in 1983. Wolf also acknowledged that conduct consistent with her direct examination testimony did not automatically mean that a child's allegations were true, and that a child who delays disclosure of abuse allegations could be lying while a child who immediately reports abuse allegations could be telling the truth. Similarly, Wolf acknowledged that behavior by an adult consistent with grooming could simply reflect an adult who has a normal relationship with a child.

C. VERDICT AND SENTENCING

Defense counsel argued to the jury that Doe was lying about the allegations against defendant, noting that her trial testimony was inconsistent (both in details of the allegations and timing of the allegations) with what she had reported to police.

The jury found defendant guilty on all four counts charged. After the defense and prosecution waived jury on special allegations relating to prior convictions, the court

found true three prior serious or violent felony convictions (§ 667, subds. (b)–(i)) and one prior serious felony conviction (§ 667, subd. (a)(1)).

The court denied defendant's *Romero* motion (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497) and sentenced him to an indeterminate term of 104 years to life in prison,[2] consecutive to a 20-year determinate term based on a five-year prior serious felony enhancement for each of the four current serious felony convictions. (§ 667, subd. (a)(1); *People v. Williams* (2004) 34 Cal.4th 397, 403–405.) At the sentencing hearing, the court "issue[d] an order prohibiting visitation between defendant and child victim pursuant to [section] 1202.05 of the Penal Code."

II. DISCUSSION

A. ADMISSIBILITY OF CSAAS EVIDENCE

Expert witness testimony is admissible if it is "[r]elated to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact" and is "[b]ased on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing ... ." (Evid. Code, § 801, subds. (a), (b).) We review a trial court's decision to admit expert testimony for abuse of discretion. (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1299–1300 (*McAlpin*).)

In *McAlpin*, the Supreme Court reviewed a challenge to a trial court's decision to admit expert testimony about "whether a parent might not report a known child molestation, and if so, why ... ." (*McAlpin*, *supra*, 53 Cal.3d at p. 1298.) Finding no

[2] The sentence consists of: Twenty-seven years to life for count one (11-year upper term (§ 286, subd. (c)(2)(C)), doubled (§ 667, subds. (e)(1), (e)(2)(A)(iii)), plus five years (§ 667, subd. (a)(1))); 27 years to life for count two (same calculation as count one); 25 years to life for count three (10-year upper term (§ 288a, subd. (c)(2)(C)), doubled (§ 667, subds. (e)(1), (e)(2)(A)(iii)), plus five years (§ 667, subd. (a)(1))); and 25 years to life for count four (10-year upper term (§ 289, subd. (a)(1)(C)), doubled (§ 667, subds. (e)(1), (e)(2)(A)(iii)), plus five years (§ 667, subd. (a)(1))).

abuse of discretion, the Supreme Court analogized the challenged testimony to "to expert testimony on common stress reactions of children who have been sexually molested ('child sexual abuse accommodation syndrome'), which also may include the child's failure to report, or delay in reporting, the abuse." (*Id.* at p. 1300.) The court noted that several decisions from the courts of appeal had found that while "expert testimony on the common reactions of child molestation victims is not admissible to prove that the complaining witness has in fact been sexually abused; it is admissible to rehabilitate such witness's credibility when the defendant suggests that the child's conduct after the incident—e.g., a delay in reporting—is inconsistent with his or her testimony claiming molestation." (*Ibid.*)

Based on decisions from Supreme Courts in other states, defendant asks us to find CSAAS evidence inadmissible for all purposes as a matter of law. (Citing *Commonwealth v. Dunkle* (Pa. 1992) 602 A.2d 830; *Bussey v. Commonwealth* (Ky. 1985) 697 S.W.2d 139; *State v. Ballard* (Tenn. 1993) 855 S.W.2d 557.) But to the extent the California Supreme Court expressly approved the admissibility of CSAAS evidence in *McAlpin, supra*, 53 Cal.3d 1289, we are bound by that precedent. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

Since *McAlpin*, intermediate courts in California have consistently found expert testimony about CSAAS admissible to rehabilitate a complaining witness's credibility. (E.g., *People v. Perez* (2010) 182 Cal.App.4th 231, 245; *People v. Patino* (1994) 26 Cal.App.4th 1737, 1744–1745; *People v. Housley* (1992) 6 Cal.App.4th 947, 955–956; *People v. Gilbert* (1992) 5 Cal.App.4th 1372, 1383–1387.) Defendant provides no compelling reason to depart from those decisions.

The trial court did not abuse its discretion in admitting expert testimony about CSAAS.

B. CALCRIM No. 1193

Defendant argues on appeal that the trial court erred by giving CALCRIM No. 1193 because that instruction may have been interpreted by the jurors as allowing them to consider CSAAS evidence for the improper purpose of determining whether Doe's allegations against defendant were true. Although defendant did not object at trial to the use of CALCRIM No. 1193, " '[w]hether claimed instructional error affected the substantial rights of the defendant necessarily requires an examination of the merits of the claim' ... ." (*People v. Ngo* (2014) 225 Cal.App.4th 126, 149; § 1259 ["The appellate court may also review any instruction given, refused or modified, even though no objection was made thereto in the lower court, if the substantial rights of the defendant were affected thereby."].) In reviewing a purportedly erroneous instruction, we review " ' " 'whether there is a reasonable likelihood that the jury has applied the challenged instruction in a way' that violates the Constitution." ' " (*People v. Richardson* (2008) 43 Cal.4th 959, 1028.) We review a claim of error about a jury instruction in the context of the instructions as a whole, rather than in isolation. (*Ibid*.)

The instruction was read to the jury as follows: "You have heard testimony from Miriam Wolf regarding Child Sexual Abuse Accommodation Syndrome. [¶] Miriam Wolf's testimony about Child Sexual Abuse Accommodation Syndrome is not evidence that the defendant committed any of the crimes charged against him. You may consider this evidence only in deciding whether or not [ ] Doe's conduct was not inconsistent with the conduct of someone who has been molested, and in evaluating the believability [of] her testimony."

Defendant takes issue with the part of the instruction regarding consideration of CSAAS evidence to evaluate Doe's "believability," arguing that the instruction improperly suggests that CSAAS evidence may be seen as evidence of the truth of Doe's allegations. But in this case the expert explicitly acknowledged that she had neither met

Doe nor conducted any investigation into Doe's allegations.[3] That testimony made clear that the expert was offering an opinion about children generally, not specifically about *Doe's* believability. Further, the words believability and credibility are synonymous,[4] and our Supreme Court has suggested that CSAAS evidence is relevant and admissible to "rehabilitate [a] witness's credibility when the defendant suggests that the child's conduct after the incident ... is inconsistent with his or her testimony claiming molestation." (*McAlpin, supra*, 53 Cal.3d at pp. 1300–1301.)

CALCRIM No. 1193 properly instructs the jury not to use CSAAS evidence as proof defendant committed the charged crimes, and the expert here made clear she was testifying based solely on her general knowledge of the subject. We find no error as it is not reasonably likely that the jury misunderstood CALCRIM No. 1193 as allowing the CSAAS expert's testimony to be used improperly as proof that Doe was in fact abused by defendant.

C. "NO VISITATION" CONDITION

Defendant argues, and the People concede, that the abstract of judgment must be modified to accurately reflect the trial court's oral pronouncement regarding the prohibition on visitation between defendant and Doe under section 1202.5, subdivision (a). Generally, where there is a discrepancy between the abstract of judgment and the oral pronouncement of judgment, the oral pronouncement will control. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.)

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[3] The expert's testimony here distinguishes this case from *People v. Bowker* (1988) 203 Cal.App.3d 385, 393–395, where the Court of Appeal found that the trial court erred by allowing an expert to apply CSAAS concepts to the specific allegations at issue in the case. (See *id.* at p. 395 ["[B]y delineating each stage of the CSAAS theory, [the expert] constructed a 'scientific' framework into which the jury could pigeonhole the facts of the case."].)

[4] Black's Law Dict. (10th ed. 2014) p. 448, [defining "credibility" as "[t]he quality that makes something (as a witness or some evidence) worthy of belief"].)

Section 1202.05, subdivision (a) provides that when a person is sentenced to state prison for various sex crimes (including sections 286, 288a, and 289) "and the victim of one or more of those offenses is a child under the age of 18 years, the court shall prohibit all visitation between the defendant and the child victim." Consistent with that subdivision, at sentencing the trial court orally "issue[d] an order prohibiting visitation between defendant and [Doe] pursuant to [section] 1202.05 of the Penal Code." But an attachment to the abstract of judgment prohibits "contact with victim *or family*." (Italics added.) Because there is no indication in the record that the trial court extended the visitation prohibition to Doe's family, we will order the abstract of judgment modified to remove reference to Doe's family.

III. DISPOSITION

The clerk of the superior court is directed to modify attachment page one of the abstract of judgment to delete the words "or family" and to forward the modified abstract of judgment to the Department of Corrections and Rehabilitation. As so modified, the judgment is affirmed.

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Grover, J.

WE CONCUR:

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Rushing, P.J.

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Premo, J.